

IN THE SENATE OF THE UNITED STATES.

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A memorial of certain Indians in Oklahoma Territory relative to their claims to the lands they occupy.

FEBRUARY 26, 1892.—Read, referred to the Committee on Indian Affairs, and ordered to be printed.

To the Senate and House of Representatives:

I transmit herewith copy of a memorial of the Wichitas, Caddoes, and affiliated tribes of Indians in Oklahoma Territory, in the matter of their claim to the lands they occupy, for consideration in connection with the agreement concluded by and between the Cherokee Commission and said Indians, and also with my communication of the 17th instant, relative to the act to pay the Choctaw and Chickasaw Indians for certain lands now occupied by the Cheyenne and Arapaho Indians.

BENJ. HARRISON

EXECUTIVE MANSION, *February 25, 1892.*

THE MEMORIAL OF THE WICHITA, CADDO, AND AFFILIATED TRIBES OF INDIANS.

The President and the Congress of the United States of America :

Your memorialists, inviting attention to the fact that by the agreement that was entered into between the Cherokee Commission and your memorialists on the 4th day of June, A. D. 1891, for the cession of certain lands and other purposes—the question of what price is to be paid to your memorialists for the tract of country, the subject-matter of the agreement, was referred to Congress, inasmuch as the Commission offered only 50 cents and your memorialists demanded \$1.25 per acre.

What follows has been prepared for your memorialists by their adopted citizen, Mr. Luther H. Pike, whom they have duly constituted their delegate *ad hoc* before the Congress, and whom they ask to be recognized and received and heard as such, in order to demonstrate their right, legal and moral, to demand and be paid at least the price, \$1.25 per acre, they have asked and do ask.

And the honorable the President is respectfully requested to give this paper his consideration and transmit it to the Congress, that it may be considered by that honorable body in connection with the agreement above mentioned that he has already transmitted to that honorable body for their consideration and action.

IN RE WICHITAS, CADDOES, AND AFFILIATED TRIBES.

The letter W is wanting in both the Spanish and French languages, a circumstance that has strongly affected the spelling and pronunciation of the same Indian proper names by different individuals of those two nations.

A Frenchman (M. Robin) has remarked upon the spelling and pronunciation of Indian names as follows:

"The voyageurs give us long vocabularies of words which they have gathered among the people with whom they have sojourned; but of what service are these dry vocabularies, each word of which is almost always altered because the ear, little exercised in hearing spoken a strange language, is not capable of catching its accents, its aspirations, its inflections, so that English orthography, for example, not being like the French, produces necessarily variations in the manner of writing these words? With us even provincial pronunciation differs greatly from the Norman or the Breton; hence in these compiled nomenclatures there is imperfection both in pronunciation and spelling."

This applies with great force to the difference in pronunciation and spelling between the Spanish and the French, and will be appreciated when reading what follows:

The Wichita name themselves Tah-way-ash. When or how they acquired the name Wichita we are unable to say, but we believe they had it when first encountered by the white man.

In what follows will be found the reasons for this belief, and a demonstration of the antiquity of the Wichitas' occupation of and their title to the country that has been occupied by them, and is the subject-matter of their agreement with the Cherokee Commission.

Wichita, pronounced Wee-chee-tah, is surmised to have been the Quivira, pronounced Kee-vee-rah, of the Spanish, who first visited the country east of what is now New Mexico.

The Wichita name for corn is tay-hass, and we state in this connection that it is their claim that they never were nomads, but that they always lived in fixed habitations and tilled the soil and raised corn and other products.

Spanish evidence as to Wichita occupation A. D. 1536.

In this year a Spaniard, Alvar Nunez Cabeza de Vaca, and three others escaped from Indians and started from what is now Matagorda Bay, in the State of Texas, to go by land to old Mexico, then called by the Spaniards New Spain. The four were naked, on foot, unarmed, wholly destitute, and therefore necessarily at the mercy of such Indians as they might encounter. It is clear that, to succeed, they had to secure the good will of such Indians as they would meet, and it is also manifest that their movements would be governed largely by such Indians.

The narrative of their wanderings and experiences is exceedingly interesting, spiced as it is with much that is of the marvelous.

As we read it in connection with later narratives it appears clear that the party, after zigzagging about in what is now the State of Texas, struck Red River at a point below the junction of the North Fork and the Prairie Dog Town Fork of that river, and then crossed the Staked Plains and the Rio Grande Del Norte and the mountains west of it to the upper part of the Gila River; that they then went down the Gila to the Gulf of California and then South along that gulf to the Spanish town San Miguel de Culiacan.

This narrative is of importance to this consideration in two particulars, to wit:

(a) Before the party started on the west course above mentioned, along the prairie Dog Town Fork, they were with Indians who lived in fixed habitations and cultivated the soil, and lived upon corn, beans, and pumpkins, and they were received kindly by those Indians, who furnished them coverings for their persons and food.

(b) It gives the words Coayos and Atayos as names of Indian towns inland, back from the Gulf of Mexico, and opposite each other.

We regard these names as the Spaniards attempted to give the Indian name Tah-wayash, and that the narrative read with these of later date locates the Wichita as far back as 1536.

The stories of Nunez and his companions aroused a desire on the part of the Spaniards to send expeditions into what is now New Mexico and the country to the east of it.

A. D. 1540.—In this year such an expedition was organized at the City of Mexico under the command of Francisco Vazquez de Coronado, that had for its guide one Estevaricco, who was one of Nunez' three companions. It marched west to San Miguel de Culiacan; then north along the Gulf of California to the Gila River; then east to first the Mogui Pueblos, and then Cibola, the Zuñi Pueblos—manifestly the back track of Nunez' party.

Early in 1541 Coronado left Cibola and went east, crossing the Rio Grande del

Norte below where Santa Fé now is, and thence out upon the Staked Plains and to the east.

There are extant three papers upon this expedition, to wit: (a) A letter of Coronado, (b) a narrative by one of the officers named Jaramillo, and (c) a very circumstantial narrative by another officer named Castenada.

Quivira was Coronado's objective point when he started from Cibola and he says that he, with thirty of his command, was at a town in the province of Quivira. He says that on the Staked Plains he met a hunting party of Tejas, pronounced Tay-hass, Indians, and that they were tattooed, a custom peculiar to the Wichitas, that, as we shall see, secured to them for a short while in later years the name Pawnee Picts, of which more anon.

Coronado says the houses of Quivira were of straw, and Jaramillo describes them thus: "The houses of these Indians are of straw, a very great number being of a circular shape; the straw descends to the ground as walls; they do not at all resemble ours; on the outside and on the top there is a kind of chapel or turret, and there is an entrance, where the Indians may be seen sitting or sleeping."

Compare this description with the drawing of a Wichita village of 500 to 600 houses made by Mr. Catlin, an English artist who accompanied the United States expedition under Col. Dodge to the Wichita country in the year 1834.

We have no information of any such houses having ever been built in that part of our country by any other Indians than the Wichitas; and certain it is they established the fact that the Indians who built them were not nomads, they being of a fixed, permanent character.

Coronado says that these Indians of Quivira had advantage over the other Indians in the houses they lived in and in cultivating corn (maize).

Catlin says: "To our great surprise we found these people cultivating quite extensive fields of corn (maize), pumpkins, melons, beans, and squashes."

Further along we will show the identity of the Tam-way-ash, Witchita, and Pawnee Picts, and more in respect to their houses and their cultivation of the soil.

The description of the country of Quivira and its productions, given by the narrators of Coronado's expedition, tallies with that given by later writers; notably Gen. (then Capt.) Marcy, in the year 1852, of the Wichita country.

A. D. 1541.—We now refer to another Spanish expedition of this year that came from the east.

In the early part of this year De Soto crossed the Mississippi River from the east to the west.

As we read the narrative of this expedition this crossing was below the mouth of the Arkansas River. The command then traversed southern Arkansas and struck the Upper Red River and was at the province of the Cayas Indians, a mountainous country and composed of populous towns.

One of the narrators of De Soto's expedition says of Cayas that it was the best in the country, and that though the houses were distant the one from the other, yet the ground that was inhabited was great, and there was great store of people and many fields of maize (corn), etc.

Making all due allowance, the words Tah-way-ash, Tejas, and Cayas are not extravagantly dissimilar, in the face of geographical location and other given facts; and we find in the narratives of the Coronado and De Soto expeditions an abundance of details to satisfy us that in 1541 Coronado and De Soto were at points in the Wichita country not far distant from one another, and that it is fair to surmise that had Coronado remained there longer he and De Soto would have come together.

Neither "Tejas," nor "Teyas," nor "Cayas" appears in the narrative of Nunez' wanderings but the narratives of Coronado's expedition show conclusively that Nunez was at villages of the Tejas.

The narratives of Nunez' wanderings gives no ground for a belief that Nunez and his three companions were any distance to the north of Red River. Coronado's course from where he crossed the Rio Grande del Norte was east to southeast to where he encountered the Tejas hunting party on the buffalo plains, and the narratives of the expedition indicate that the main or permanent villages of these Tejas Indians were west from where the hunting party was encountered.

The narratives of De Soto's expedition locate the Cayas villages on both sides of the river, a correspondence with the Nunez narrative that has the Coayos and Atayos towns opposite one another.

In 1689 a Spanish expedition under Governor Alonso de Leon went north from Matagorda Bay and was at a village of the Tejas Indians.

Thus we have four Spanish expeditions to the Tejas country—two from the south, one from the west, and one from the east.

Taken together, they demonstrate, we think, that their objective point, the Tejas country, was on Red River, in the vicinity of the Wichita Mountains.

If we attempt to locate the Tejas villages elsewhere, we can not escape making the

course of the expeditions too far to the north or to the south, or too far to the east or to the west.

It appears to us that the Spaniards getting corn (Tayhass) from these Indians (the Tayhass of the Indians would be spelled Tejas by the Spaniards) supposed Tayhass to be the correct pronunciation of the Wichita name Tah-way-ash, and called the Indians Tejas, Teyas Indians, as intended to distinguish them as corn, Tayhass, Indians—that is, corn-raising Indians—from the other Indians about them, who were nomads, living upon fruit, roots, and the flesh of the game they killed, and did not cultivate the soil.

After Coronado's were other Spanish expeditions to the east of New Mexico. We have sought diligently in the libraries at Washington City for copies or translations of the narratives of them, and regret we have to say we have found nothing of the kind and have little more than reference to them.

We regret this because such references as we have satisfy us that Quivira and the Tejas Indians were at an early day resolved into Wichitas, *i. e.*, Tah-way-ash.

A. D. 1599.—Before this year there appears to have been an expedition under one Chamascado.

A. D. 1600 or 1601.—Was an expedition under Don Juan Onate, governor of New Mexico. This is referred to in a Spanish document, a copy of which is in vol. 16 of the Madrid publication entitled "Collocion de Documentos Ineditos de Indias," pp. 38-66. On page 54 it credits Onate with having discovered well out on the buffalo plains a large number of Indians living in a town, the location of it admirable and its houses of straw plaited upon stout poles, and it surmised it to be the Quivira of Coronado.

A. D. 1634.—Capt. Alonso Vaca is credited with having marched 300 leagues east from the Rio Grande del Norte to the great river across which was Quivira.

A. D. 1650.—Capt. Herman Martin and Diego del Castillo went to the country of the Jumanos (Comanches) on Red River, where they remained six months and then went down that river southeastward for 50 leagues to the country of the Aijaos (Ah-ee-ha-os), Cuitoas (Coo-ee-to-ass), and Tejas. Now from Atayos of Nunez we have gotten to Ah-ee-ha-os of Martin and Castillo, and a little farther we will be as close to Tah-way-ash as a Spaniard could be expected to give it.

From Coyos of Nunez we have come to Coo-ee-to-ass, a close approximation to Wichita.

A. D. 1654.—In this year the governor of New Mexico, by order of the viceroy of Mexico, sent Diego de Guadalajara with 30 soldiers and 200 allies to the Jumanos (Comanches). It was learned that the Aijaos, Cuitoas, and Escanjaques were at war. Andreas Lopez was sent to investigate, and after advancing east 30 leagues encountered and defeated the Cuitoas in a battle that lasted all day.

A. D. 1662.—This was the year of Penalosa's expedition. The narrative of it by the Father Freytas is a wonderful production. There is reason for the belief that Freytas cut up and highly decorated a narrative of Onate's expedition in order to advance Penalosa's interests at court.

A. D. 1686.—This year is that in which Padre Alonso Benavides made a report upon the successive expeditions made previously to the east. He was for many years a missionary in New Mexico, and was at this time definidor and procurador-general of the Franciscans in Mexico. The report, made at the request of the viceroy, gave a chronological account of the expeditions, and it is said of it that it is the best statement extant respecting the current ideas of northeastern geography among intelligent men not personally interested in adventurous schemes of conquest.

We have the references by different writers to this report. Each is to the effect that Benavides located Quivira and "Ahijaos" or "Aixaos" on Red River, 30 or 40 leagues east of the Jumanos, or 280 or 300 leagues east of Santa Fé; that is to say, in the country about the Wichita Mountains.

A. D. 1689 was the expedition, already mentioned, of Governor Alonso de Leon, north from Matagorda Bay to a village of the Tejas.

In 1685 the French under La Salle had established a colony at Matagorda Bay, and De Leon's expedition was sent to break it up, but before he got there the Indians had accomplished that and had murdered all the colonists except some four or five, whom they carried away into captivity. De Leon made his expedition north with a view of securing these captives.

A. D. 1759.—An army of 500 soldiers and volunteers, with a large force of Apache auxiliaries, in the best of spirits and under the command of Parrellan, from Bexar, on the river St. Anthony, far from the coast, marched some 150 leagues and surprised a village of Comanches, and killed 55 and took many prisoners. They then advanced against the towns of the "Taovayas" (Tah-o-vah-jah-ses), and in the region of what was later called San Teodoro found 6,000 Indians of different tribes in a strongly fortified position, who made a sortie and the Spaniards fled. Then Padre Calahorra ventured alone to San Teodoro, scene of the Spanish defeat, and succeeded in making peace with the "Northern tribes." (Mori. Mem. Hist. Texas.)

A. D. 1778.—At a junta held at Bexar by the general's order, Lieut. Actranase de Mezieres was present. He was in command at Natchitoches under the Spanish governor of Louisiana, and all these years he was very active and successful in efforts to control the Northern Indians, extending his tours to the rancherias of the Taovayases, which he named San Teodoro and San Bernardo, on the upper Red river. (Morfi, etc.)

A. D. 1788.—The following is an extract from a translation of the "Itinerary, diary, and computations of leagues of a journey of discovery from this, the province of New Mexico, to the Fort of Natchitoches and the province of the Texas, undertaken by superior orders jointly with Don Pedro Vial, by me, the undersigned, commissioner for this purpose, Francisco Xavier Fragosó, town of Santa Fe, the 24th of June, 1788."

"July 20: Started at 5 o'clock a. m.; course eastward; after crossing the river struck a plain two or three leagues in length, and reached the Taguayachi (Tahuayce) villages at 9 o'clock a. m., 4 leagues."

He was at these villages four days.

Upon the foregoing references we conclude with the Spanish evidence, and now refer briefly to some furnished by the French.

A. D. 1673.—The French claimed the discovery of the Mississippi River in this year by Father Marquette and Sieur Joliet.

A. D. 1682.—La Salle descended the Mississippi River from the Wisconsin River to its mouth, manifestly the first European to do so.

A. D. 1685.—He established the French colony at Matagorda Bay—already mentioned—that was destroyed by the Indians in 1688 or 1689.

A. D. 1713.—The town of Natchitoches, in the present State of Louisiana, was established by the French, but it seems clear that prior to that time French voyagers had visited Upper Red River and acquired and furnished information in respect to the Indians there. This is evidenced by the fact that William de L'Isle, a member of the Royal Academy of Science, made at Paris, France, in the year 1700, a map of "L'Amerique Septentrionale."

We have a copy of a map "of Louisiana and the course of the Mississippi" made by him about 1712. On Upper Red River he located two villages that he names "Les Quichaatcha, ou les courtes jambes." That is the Quichaatcha, or the short legs.

A. D. 1718.—In this year M. Bernardo de la Harpe, who had received a concession from the King of France, established a French post to the west of Natchitoches.

A. D. 1719.—He made an expedition to Upper Red River and met there, among other Indians, the "Toayas."

This post, established by De la Harpe, was the French settlement nearest to the Wichita Mountains country that we have any information of, and we have no information of any Spanish settlement appreciably nearer to that country.

M. Robin was a Frenchman who visited what is now the State of Louisiana in the years 1802-1806. He published a narrative of his voyages in Paris in 1807, and in the third volume thereof published a geographical memoir, furnished him by a French officer, a descendant of the celebrated Saint Denis, who was among the first Frenchmen that went to Louisiana. On page 3 he says:

"From the Great Caddoes to the Taouayaches, who are found upon the west bank of the said river (Red), and the Ouiciteas, upon the east, these two villages opposite one another, 80 leagues."

So much from the French and now from American resources.

A. D. 1803.—In this year the United States purchased from France the territory of Louisiana that included the country about the Wichita Mountains.

A. D. 1805 (April 5).—John Sibley wrote a paper of this date at Natchitoches entitled "Historical sketches of the several Indian tribes in Louisiana south of the Arkansas River and between the Mississippi and river Grande," and to be found in American State Papers, vol. 5; Indian Affairs, vol. 2, pp. 721-725.

(P. 723.) "Panis or Towiaches. The French call them Panis and the Spaniards Towiaches. The latter is the proper Indian name. They live on the south bank of the Red River. By the course of the river upwards of 800 miles above Natchitoches, and by land, by the nearest path, is estimated at about 340. They have two towns near together. The lower town, where the chief lives, is called Witcheta, and the other is called Towaaahach. They call their present chief the Great Bear. They are at war with the Spaniards, but friendly to those French and American hunters who have lately been among them. They are, likewise, at war with the Osages, as are every other nation. For many hundreds of miles around them the country is rich prairie, covered with luxuriant grass, which is green summer and winter, with skirts of wood on the river bank, by the springs, and creeks.

"They have many horses and mules, they raise more corn, pumpkins, beans, and tobacco than they want for their own consumption; the surplage they exchange with the Hietans (Comanches) for buffalo rugs, horses, and mules; the pumpkins they cut round in their shreds, and when it is in a state of dryness that it is so

tough it will not break, but bend, they plat and work it into large mats, in which state they sell it to the Heitans, who, as they travel, cut off and eat it as they want it. Their tobacco they manufacture and cut as fine as tea, which is put into leather bags of a certain size, and is likewise an article of trade. They have but few guns and very little ammunition; what they have they keep for war, and hunt with the bow; their meat is principally buffalo; seldom kill a deer, though they are so plenty they come into their villages and about their houses like a domestic animal. Elk, bear, wolves, antelope, and wild hogs are likewise plenty within their country, and white rabbits or hares, as well as the common rabbits; white bears sometimes come down among them, and wolves of all colors. The men go entirely naked and the women nearly so, only wearing a small flap of a piece of skin. They have a number of Spaniards among them of a fair complexion, taken from the settlement of Santa Fé, and have no knowledge of where they come from. Their language differs from that of other nations, the Tawakenoes excepted. Their present number of men is estimated at about 400. A great number of them four years ago were swept off by the smallpox."

The same Mr. Sibley in a letter to Gen. Dearborn, Secretary of War, dated Natchitoches, April 10, 1805, says (*Ib.* p. 725):

"You request me to give you some account of Red River, and the country adjacent. I will endeavor to comply with your request to the best of my knowledge and capacity. My personal knowledge of it is only from its mouth to about 70 or 80 miles from Natchitoches, being by the course of the river near 400 miles. After that what I can say of it is derived from information from others on whose veracity I have great reliance, principally from Mr. Francis Grappe, who is my assistant and interpreter of Indian languages." * * *

(P. 726.) "The general course of Red River from (mouth of Little River) upwards is nearly from west to east, till we arrive at the Panis towns, when it turns northwardly." * * *

(P. 729.) "From the mouth of the (Washita) Indian Bahachaha, and by the French Faux Oacheta through the prairie to the main branch of the Arkansas is three days' journey, perhaps 60 or 70 miles in a straight line. From this to the Panis or Towiache towns, by land, is about 30 miles, and by water, double the distance. The river is near a mile wide." * * *

Mr. Grappe, to whom I am indebted for the foregoing accurate description of Red River, informed me that his personal knowledge of it did not extend but little above the Panis towns; but Mr. Brevel, of the Isle Brevel, who was born at the Caddo old towns, where he was, had been further up it, and that whatever account he gave me might be relied on.

"I therefore sought an opportunity a few days after to obtain from Mr. Brevel the following narrative, which I wrote down from his mouth as he related it: 'About forty years ago (1765) I set off on foot, from the Parris Nation, who then lived about 50 leagues above where they now live, in company with a party of young Indian men, with whom I had been partly raised, on a hunting voyage and to procure horses. We kept up the south side of Red River.

"I believe the distance from the Parris towns to where we saw the last of Red River is at least 100 leagues. * * * After furnishing ourselves with horses at this place (Santa Fe) we set off again for the Parris towns, from whence we started steering at first southwardly, in order to avoid a high mountainous country that is difficult to cross, that lies between Santa Fe and Red River. After traveling some distance south, we turned our course again northeastwardly, and arrived at the Parris towns in eighteen days from the day we left Santa Fe settlements, and in the three months and twenty days from the time we started. He is of the opinion that from the Parris towns to Santa Fe, in a right line, is nearly 300 miles, and all the country prairies, a few scattering cedar knobs excepted."

"N. B.—This statement is most important, read with the narrative of Nunez's journey—1536, and with Fragos's journey, 1788, both already noticed."

We now proceed to consider the history of the Wichitas in connection with the dealings of the United States with them and their country.

A. D. 1803.—The United States bought Louisiana from France.

A. D. 1818 (Aug. 24).—On this day the United States made a treaty for a cession of territory with the Quapaw tribe of Indians, who, at the time, numbered only 708 souls and were living on the Arkansas River just above its mouth. (See 7 Stat., p. 176.)

Jedediah Morse reported to the Secretary of War in words following (1822 Appendix, p. 237):

"The present country of the Quapaws is on the south side of the Arkansas, between that river and the Wichita; opposite the Arkansas Post and Little Rock, and of the river between these places."

In 1818 they ceded to the United States 30,690,560 acres of excellent land between

the Arkansas and Red rivers; for which was given to them \$4,000 in goods and merchandise, and an annuity also in goods of \$1,000.

This cession covered the country then occupied and claimed by the Wichitas, as will be seen upon a reading of the treaty (7 Stat., *supra*).

A claim that it did so legally would be so manifestly absurd as to need no discussion to demonstrate it, and yet it is the only act on the part of the United States to extinguish Indian title to the country so long and so continuously occupied and claimed by the Wichitas conformably to law.

A. D. 1820 (October 18).—On this day the United States made a treaty with the Choctaws, by the second article of which (7 Stat., p. 277) they ceded to the Choctaws a portion of the then Territory of Arkansas, all west of that Territory covered by the Quapaw cession just above mentioned and a part of what then belonged to Spain.

A. D. 1825 (January 20).—Another treaty was made with the Choctaws (7 Stat., p. 234) and *A. D. 1830* (September 27) still another (7 Stat., p. 333).

These two last-mentioned treaties are mentioned rather as historical facts than as having any particular bearing upon the present discussion.

A. D. 1835 (August 24).—On this day a treaty was made between the United States and the Wichitas and Comanches and between the Wichitas and Comanches and the Choctaws, Cherokees, Creeks, and Osages. (See 7 Stat., pp. 474, 475.) Treaty proclaimed May 19, 1836.

Its preamble recites that it was made "For the purpose of establishing and perpetuating peace and friendship between the United States of America and the Comanche and Witchetaw nations and their associated bands or tribes of Indians, and between these nations or tribes and the Cherokee, Muscogee, Choctaw, Osage, Seneca, and Quapaw nations or tribes of Indians," etc.

Article 3 recites: "There shall be a free and friendly intercourse between all the contracting parties hereto, and it is distinctly understood and agreed by the Comanche and Witchetaw nations and their associated bands or tribes of Indians, that the citizens of the United States *are freely permitted to pass and repass through their settlements or hunting grounds without molestation or injury on their way to any of the provinces of the Republic of Mexico or returning therefrom*" * * *

Article 4 recites: "It is understood and agreed by all the nations or tribes of Indians, parties to this treaty, that each and all of the said nations or tribes have free permission to hunt and trap in the Great Prairie west of the Cross Timbers, to the western limits of the United States."

Article 5. "The Comanche and Witchetaw Nations and their associated bands or tribes of Indians, severally agree and bind themselves to pay full value for any injury their people may do to the goods or other property of such traders as the President of the United States may place *near to their settlements or hunting ground for the purpose of trading with them.*"

Article 6. "The Comanche and Witchetaw Nations and their associated bands or tribes of Indians agree that, in the event any of the Red people belonging to the nations or tribes residing south of the Missouri River and west of the State of Missouri, not parties to this treaty, *should visit their towns or be found on their hunting grounds that they will treat them with kindness and friendship and do no injury to them in any way whatever.*"

Article 9. "The Comanche and Witchetaw Nations and their associated bands or tribes of Indians agree that their entering into this treaty shall in no respect interrupt their friendly relations with the Republic of Mexico, where they all frequently hunt and the Comanche Nation principally inhabit."

One thing about this treaty is too plain for denial. It is that it was the Great Prairie west of the Cross Timbers to the western limits of the United States that was the subject-matter and that the Wichitas and the Comanches were called upon by the United States to agree with them in respect to that particular country and none other.

This treaty operated and still operates as an estoppel in pairs against the United States and the Choctaws in favor of the Wichitas, for:

"By calling upon the Wichitas to enter into the treaty and by having it speak of their settlements, towns, and hunting grounds in that country, and that they thereby agreed to refrain from doing and to permit others to do certain things there, the United States most solemnly and conclusively recognized that the Wichitas had towns and hunting grounds and dominion there, and had thereby the usual or customary Indian title, by occupation, to that country. The treaty forever stops the United States from denying that the Wichitas then had the customary Indian title to that country."

In respect to such customary title the Supreme Court of the United States has expressed itself as follows: "As long ago as the *Cherokee Nation v. Georgia*, 5 Pet., this court said that the Indians are acknowledged to have the unquestionable right to the lands they occupy until it shall be extinguished by a voluntary cession

to the Government, and recently in *United States v. Cook*, 19 Wall., 581, that right was declared to be as sacred as the title of the United States to the feet; this perpetual right of occupancy, with the correlative obligation of the Government to enforce it. For all practical purposes they owned it, as the actual right of possession, the only thing they deemed of value, was secured to them until they should elect to surrender it to the United States. In the free exercise of their choice they might hold it forever, and whatever changed this condition or interfered with it violates the guarantees under which they live." (Leavenworth, etc., *v. United States*, 92 U. S., 742; *Beecher & Wetherby*, 92 U. S.)

"Until the Indians have sold their lands and removed from them in pursuance of the treaty stipulations, they are to be regarded as still on their ancient possessions, and are in under their original rights and entitled to the undisturbed enjoyment of them. All agree that the Indian right of occupancy creates an indefeasible title to the reservations that may extend from generation to generation, and will cease only by the dissolution of the tribe or their consent to sell." (*The New York Indians*, 5 Wall., 770.)

It is impossible for the United States to show that the Wichitas and their affiliated tribes have ever sold or by voluntary cession have extinguished their title so recognized, as stated above, by the United States, and this and the law is the vindication of their right to demand and receive \$1.25 per acre for what is covered by the agreement made with the Cherokee Commission, on June 4, 1891.

By the express recital in article 9 that the Comanche Nation principally inhabited Mexico, the United States forever stopped themselves from denying that fact and its legal consequence that only those of that nation that actually had settlement in the Great Prairie had any title there.

The Wichitas were not citizens of the United States and so were not charged by law with knowledge of either the cession made to the United States by the Quapaws or that made to the Choctaws by the United States.

When the United States and the Choctaws came to the Wichitas to get them to make the aforementioned treaty of 1835, they were in duty bound to make known to them that such concessions had been made. They did not do so, and the Wichitas had no knowledge of them, consequently the treaty operated, and operates, as an estoppel upon both the United States and the Choctaws claiming any title, right, or interest against the Wichitas under either of said cessions.

It will be seen further along that the Wichitas made formal protest against the cessions when they came to a knowledge of them.

A. D. 1837 (January 17).—By an agreement of this date between the Choctaws and Chickasaws, and subsequently approved by the President and Senate of the United States, a district was carved out of the country ceded to the Choctaws for the Chickasaws, the Wichitas being included in this Chickasaw district. (See Stat. 7, p. 605).

A. D. 1854.—The Wichitas having learned from an inspection of maps constructed by United States officers, and from information derived from well-informed red and white men, of the cession, of their country, which they described as west from the mouth of the Washita River and north of Red River, to the Choctaws and Chickasaws, made formal protest and application for redress against such cession, that seemed to have gone unnoticed. There is ample proof of this in the official correspondence in custody of the Indian office in Washington city.

A. D. 1855.—Early in this year the relations between the Indians living in the State of Texas and their white neighbors were in an unsatisfactory condition. To overcome this the policy of colonizing those Indians upon reserves was resolved upon, and the State of Texas set apart two reservations for that purpose, and Mr. Robert S. Neighbors was appointed the United States agent to carry out the policy there.

At this time the Indians living north of Red River and west of 98° west longitude were being charged with hostile incursions into Texas.

In consequence of these charges and the recommendations of Mr. Neighbors, and possibly the protests of the Wichitas against the cession of their country to the Choctaws and Chickasaws, it became the desire of the authorities to try and create a reserve north of Red River and west of 98° west longitude for the Wichitas and their immediate neighbors in that locality.

Dissentions between the Choctaws and Chickasaws led to the making of a new treaty between them and the United States on the 22d day of June of this year. (See 11 Stat., p. 611.)

The United States took advantage of the making of this treaty to secure from the Choctaws and Chickasaws a certain relinquishment and lease in consideration of the sum of \$800,000 paid to them by the United States.

The stipulation for the relinquishment and lease is the ninth article of the treaty, and is as follows:

"ART. 9. The Choctaw Indians do hereby absolutely and forever quitclaim and relinquish to the United States all their right, title, and interest in and to any and all lands west of the one hundredth degree of west longitude; and the Choctaws

and Chickasaws do hereby lease to the United States all that portion of their common territory west of the ninety-eighth degree of west longitude, for the permanent settlement of the Wichitas and such other tribes or bands of Indians as the Government may desire to locate therein; excluding, however, all the Indians of New Mexico, and also those whose usual ranges at present are north of the Arkansas River, and whose permanent locations are north of the Canadian River, but including those bands whose permanent ranges are south of the Canadian or between it and the Arkansas; which Indians shall be subject to the exclusive control of the United States, under such rules and regulations, not inconsistent with the rights and interest of the Choctaws and Chickasaws, as may from time to time be prescribed by the President for their Government: *Provided, however,* The territory so leased shall remain open to settlement by Choctaws and Chickasaws as heretofore."

It is to be remarked of this treaty that the Wichitas were not parties to it and were not consulted about it. It created no contract relations between the United States and the Wichitas, and by law could not and did not either diminish or increase the rights of the Wichitas against the United States. It certainly was not responsive to what the Wichitas asked of the United States when protesting against the cession of their country to the Choctaws and Chickasaws.

But it did create a contract between the United States and the Choctaws and Chickasaws; and that contract bound the United States not to locate on the leased district a single Indian whose location there was not contemplated by the contract.

The treaty in a manner designated specifically what Indians were to be located there. It did not contemplate that the Wichitas were to be restricted to a small tract of the leased district, a mere fragment of it; but its intent was that the Wichitas and those whom it contemplated should be located there—not a large number of souls—should have and enjoy the entire leased district in common *per my et per tout*.

In the fall of this year the Wichitas renewed their protest and appeal for redress, and the superintendent, alluding to the treaty in his report for that year (1855), said:

"I understand that one of the provisions of the treaty assigns the Wichitas a permanent home in the Choctaw country. Last year this tribe made representations that their country, inhabited by them from time immemorial, had been given to the Choctaws without their consent and without remuneration, and earnestly protested against it. Whether this tribe, having had no voice or representation in the constitution of this treaty, will be satisfied with its provisions concerning themselves, or will present themselves before the General Government as petitioners for redress and remuneration, can not, as yet, be known with any degree of certainty."

A. D. 1856.—The Commissioner of Indian Affairs, in his report for this year, said (p. 15), "The flattering success in Texas gives promise that by a similar policy the Southern Comanches, Wichitas, and other wandering bands near the northern frontier of that State may be successfully colonized on the western end of the Choctaw country, for which provision was made by the treaty of June 22, 1855, between the United States and the Choctaws and Chickasaws."

This quotation is made in order to show who were the Indians the contract contemplated should be located upon the leased district.

A. D. 1857.—Supervising Agent Neighbors wrote Gen. Twiggs, U. S. Army, on 17th July of this year as follows: "The reserve as designated by the treaty with the Choctaws and Chickasaws will embrace the country west of the ninety-eighth parallel of longitude, from Red River to Canadian, and will be ample for all the Indians, both for farms and hunting grounds, and is a country in every respect suitable for this purpose, as it is well watered, with an abundance of good timber and pasturage."

This certainly shows that it was then understood that the entire leased district was to be held and enjoyed by the Indians in common. (See further report of Agent McKisick for same year, p. 260.)

A. D. 1858.—This year presented two important facts: (a) The existence of actual hostilities between the Indians on the reserves in Texas and their white neighbors, that made the situation so unsatisfactory and serious that the removal of these Indians from that State to the Indian Territory was considered and determined upon; (b) a force of the United States Army attacked a party of Comanches encamped near the village of the Wichitas and killed a large number of them and also foraged upon the fields of the Wichitas and consumed and destroyed together the entire growing crops.

The circumstance was very unfortunate for the Wichitas. They had induced the Comanches to come in and have a friendly talk with the United States officers at Fort Arbuckle. This fact was not known to the officer in command of the force that did the killing, but the Comanches believed that the Wichitas had acted treacherously towards their people and changed from friends to enemies of the Wichitas. This and their deprivation of their supply of food for the coming winter necessitated

the Wichitas leaving their village and going to Fort Arbuckle for assistance and protection. The official reports for the year treat fully of these facts.

In his report Maj. Elias Rector, superintendent of the southern superintendency, expressed himself as follows in respect to the aforementioned treaty of 1855. "How far the Wichitas are subject to their (the Choctaws and Chickasaws) laws, and what rights they and the other Indians there settled may have, political and otherwise, are questions that must some day be debated."

A. D. 1859.—Early in the summer of this year Superintendent Rector went from Fort Smith, Ark., to Fort Arbuckle to arrange for getting the Wichitas back to their old home and for removing to the leased district the Indians that were in Texas.

Delegates from the Texas tribes were brought up and the leased district was visited in order to select the site for a military post it was determined to establish there and locations for the different tribes. All then returned to Fort Arbuckle, where a council was held July 2.

The Texas Indians agreed to their removal to the country visited.

The Wichitas were desirous of getting back to their old home, and this and their dependent condition precluded their offering any resistance to the locating of the Texas Indians in their country. In fact, they were induced by the representations and municipal promises made to them and to the others to passively acquiesce in the others being located in their country.

This council was of very grave importance to the Indians, and, as it has resulted in the current of time, it is a matter of great regret that what was transacted at it was not embodied in a formal, written treaty.

Proceeding with the facts; the military post, Fort Cobb, was established, the Texas Indians were brought up and the Wichitas were placed upon a valley on the south side of the Canadian instead of being returned to their old home near the Wichita Mountains.

It is to be remarked of this whole transaction as follows:

The Choctaws and Chickasaws were no parties to what took place at the council at Fort Arbuckle; they were not consulted about it and what followed it their consent thereto was not deemed necessary and was not asked for or given.

The Texas Indians were not of those whose location upon the leased district was contemplated by the contract of 1855 between the United States and the Choctaws and Chickasaws, and the United States violated the contract in locating them there.

The Wichitas claimed and claim that their right to the country was independent of and superior to the contract of 1855 between the United States and the Choctaws and Chickasaws, and that a wrong was done them in bringing the Texas Indians into their country without their free and voluntary assent and without compensation to them therefor.

They claimed and claim that the contract of 1855 was made in order to secure to them the permanent use and enjoyment of the leased district in common with the other Indians whom that contract contemplated being located there, and that they were given to understand at the Fort Arbuckle council that they were to have such permanent use and enjoyment of the entire district.

The United States have been placed in the attitude of making two conflicting claims each of which was in violation of their contract with the Choctaws and Chickasaws and the assurances given to the Indians at the Fort Arbuckle council.

The United States first claimed that the contract gave to them the right to give to the Wichitas only just so much of the leased district as it suited them to give, and that the assurances of the Fort Arbuckle council were that the Wichitas should have only a small reserve, a mere fragment of the district on the south side of the Canadian, some 25 miles west of those on the Washita.

In this matter the Indians were right in their claim and the United States wrong. The report of Superintendent Rector is proof that the Indians were right. What else did he mean when he reported that he had found the whole region in and about the Wichita Mountains to be without valleys of arable land, and worthless except for grazing and hunting purposes; that the Indians needed more land for grazing than for cultivation and that the country around the mountains ought to be reserved as common grazing and hunting ground; that it was not only desirable but absolutely necessary that the Indians should turn their attention to stock-raising, for which said valleys were admirably suited, and that their flocks and herds, when danger from hostile Indians disappeared, could be driven for pasturage to the great grassy plains around the mountains.

In this connection attention is invited to the testimony given by Indians and whites who were present at the Fort Arbuckle council.

But a few years after the 1855 contract was made—as will be seen further along—the United States parceled out the entire leased district, the larger part to Kiowas, Comanches, and Apaches, and the remainder to Cheyennes and Arapahoes, and then claimed, and now claim, that the Wichitas and the Texas Indians, who were made affiliates with them by the United States in 1855, were not given or secured any por-

tion of the leased district by and under the 1855 contract between the United States and the Choctaws and the Chickasaws and the assurances given at the Fort Arbuckle council; and this directly in the face of the express language of article 9, that the Choctaws and Chickasaws leased the country "for the permanent settlement of the Wichitas," etc., and the emphatic assurances given to the Indians at the council that they should have the leased district as long as the grass should grow and the waters should run.

This last-mentioned claim was and is exceedingly unjust to the Texas Indians, who, by the surrender of their reserves and right to a country in Texas, gave a valuable consideration for what they were promised and believed they had gotten in the leased district.

In this connection it is to be stated that promises were made to the Wichitas of remuneration for the losses they suffered by the consumption of their crops by the troops of the United States and by the hostility of the Comanches; and promises were made to the Texas Indians for remuneration for the losses they suffered by reason of their hasty removal from Texas.

These promises have never been made good, for it is idle to pretend that the United States made such remuneration by appropriations of money to be spent by Government officials for supposed general purposes when as the losses were suffered by individuals to whom the remuneration is to be made direct if made at all.

A. D. 1860.—Early in this year the Wichitas made protest and remonstrance against the appropriation of their country—again defined—to other Indians without compensation, etc.

In his report of this year Superintendent Rector said (p. 118):

"The Indians removed from the Texas reservations and the Wichitas and bands of affiliated with them settled last year upon the False Wichita River, in the district of country leased from the Choctaws and Chickasaws, were visited by me early the last summer and are doing well notwithstanding the constant alarm they have been kept in by the threats and excitement of the people on the frontier of Texas. * * * Great efforts were made last spring to create the belief that it was these reserve Indians who were committing the greatly exaggerated depredations on the Texas frontier, but it is positively certain that none of them stirred from the reserve.

"They deserve to be kept alive, for there never has been anywhere a set of uncultivated and almost wholly uncivilized Indians who have exhibited more industry and a stronger inclination to work and sustain themselves and become possessed of property of their own. If they are justly dealt with, not permitted to be hunted down as game and exterminated, but encouraged and rewarded, they will soon become self-supporting, and triumphantly vindicate the wisdom of the policy of colonization."

The following from the report of Mr. Leeter, the agent of the Texas Indians for this year, 1860 (p. 155), is given as an introduction to what took place a few months subsequently:

"They have been overcast by a series of peculiar misfortunes and have met with the cruelest reverses I ever knew. After many years of strife and the shedding of blood in Texas, they in good faith entered into treaty stipulations, quietly settled upon the portion of lands allotted to them, and industriously cleared and cultivated fields, built houses, and for the brief space of time which they were permitted to pursue an honest and peaceful life they improved more rapidly in the arts of civilization by a hundred per cent than any other tribe or tribes of which I have any knowledge. But, alas! this season of quietness and peace was but too soon to terminate; evil-minded and designing men commenced their work of desolation upon them; outrages and monstrosities were committed difficult to realize in an enlightened age; their property was destroyed; some of their women and children killed and the remainder threatened to be hunted down, until finally they were forced to abandon Texas and settle here. They did so, under promises of peace, protection, and ample supplies, until such time as they could learn to become a self-supporting people. But they appear still to be pursued and threatened by the Texans. They are a willing and obedient people, tired of a wandering or nomadic life, and anxious to learn the arts and customs of civilized men."

A. D., 1861.—Early in this year the war between the North and the South broke out. Texas troops entered the Indian Territory and the United States forces abandoned all the military posts there, whereby the United States were incapacitated from giving the protection promised.

In the winter of this year and 1862 almost all the Indians about Fort Cobb left for the North.

Throughout the war these Indians were the friends of the United States, though their people, being refugees, suffered greatly and many died. In respect to this, what follows is taken from reports of the Commissioner of Indian Affairs.

A. D. 1862 (p. 174).—"The Seminoles, Wichitas, Caches (Caddoes), Kickapoos, and Delawares, and some of the Creeks, joined Opothleyoholo, and, after two or three

fight, were obliged to retreat north. While on their way north they suffered a great deal; a good many were frozen to death, especially the women and children."

(*Ib.*, p. 166).—"Out of 204 fugitive Indians from the country around Fort Cobb, fifty-four warriors were mustered into the service of the United States. Some twenty of their friends joined them when in the neighborhood of Fort Gibson, and came to Kansas with our retreating arms."

(*Ib.*, p. 151).—"It is impossible for me to depict the wretchedness of their condition. Their only protection from the snow upon which they lie is prairie grass, and from the wind and weather scraps and rags stretched upon switches; some of them had some personal clothing; most had but shreds and rags, which did not conceal their nakedness, and I saw seven, ranging in age from 3 to 15 years, without one thread upon their bodies. They are extremely destitute of cooking utensils and axes or hatchets; many can with difficulty get wood to make fires, either to warm themselves or to cook with, which, together with the want of cooking utensils, compels many of them to eat their provisions raw. They greatly need medical assistance; many have their toes frozen off, others have feet wounded by sharp ice or branches of trees lying on the snow; but few have shoes or moccasins. They suffer with inflammatory diseases of the chest, throat, and eyes. Those who come on last get sick as soon as they eat."

(*Ib.*, p. 136).—"Great numbers had suffered so much from exposure as to survive but a short time. The mortality from this cause has been and still is very great, fully 10 per cent of those who reached the camp having since died."

A. D. 1864 (p. 24).—"The Caddoes, loyal refugees from Texas, who have been for some time under charge of Agent Colley, have continued steadfast to the Government and patiently labored for their own subsistence. They will need some assistance to help them through this winter, and deserve special consideration."

(*Ib.*, p. 224).—"The Caddoes have thus far kept out of all these difficulties; they have moved down the Arkansas to a point between the Crow and Turkey creeks, have planted the seeds they brought with them from Texas, and have raised a crop which will assist in subsisting them during the next winter. I would again earnestly call the attention of the Department to these Indians, and request that some provision be made for their support, as I fear that the other tribes will make war upon them if they do not assist them in their depredations."

(*Ib.*, p. 305).—"The Wichitas and their affiliated tribes of refugee Indians, who have until lately been subsisted at a point near Belmont, Kans., were duly notified last spring to prepare themselves for removal south, but they declined to go, and preferred to locate at the confluence of the Big Walnut and Arkansas rivers and subsist upon buffalo and antelope. This privilege I cheerfully granted them, as it relieved the Government of feeding about 1,900 refugees. Before they started, however, I supplied them with a liberal amount of flour and ammunition, and since then I hear of no complaint from them as to their ability to make a living; but complaints, loud and long, of the ravages of the vicious and lawless vagabonds of whites that have followed these Indians for the purpose of plunder and theft. I learn that they are selling them whiskey, stealing their ponies, and cheating and robbing them of everything they have worth stealing."

(*Ib.*, p. 319).—"The smallpox has prevailed to a considerable extent this season among the Indians, especially among the Caddoes and Shawnees, and has proved fatal in many cases. The disease is now subsiding. I held a council with the chiefs and headmen on the 14th instant, and from strict inquiries became fully satisfied that they have not had any intercourse with any hostile western tribes, or any intention to go into council with them for any purpose whatever. They may, I think, be considered perfectly reliable, loyal to the Government, and friendly to the whites. The Indians of this agency say they are refugees from their own country, dependent on the Government for support and protection, and express a strong desire to merit by their actions such protection and support."

A. D. 1865 (p. 41).—"The Wichita agency comprises about 500 Shawnees, and the Wichitas and fragments of the Caddoes, Comanches, and others, amounting to about 1,800. These last were, before the war, settled upon the lands leased from the Choctaws. They have never had much attention given them by the Government, and were driven from Texas by the greed of white men. Thus they have not for years had a settled home. * * * They are very poor and miserable, and must have help; and they ask to be placed somewhere where they can feel that they have a permanent home, and go to work in earnest next spring. * * * It needs no argument, the bare suggestion is enough, to show the duty of the Government towards the loyal and friendly portions of these tribes, who have sealed their devotion with their blood. * * * On every account, then, of patriotism, humanity, and economy, I trust that there may be quick and liberal action in reference to the wants of these Indians. In regard to the question of compensation of the loyal portion of these southern tribes for their untold losses and sufferings, I do not feel it necessary to use many words. * * * But our Government was under obligations by solemn treaties to defend and protect these

Indians; and without discussing the extent of this obligation, it can do no less now than to aid those who are actually suffering for the simplest necessities of life. This is only the dictate of humanity.

"For the rest the Indians must await their time; but when that time comes their claim will be very strong and must be heard."

The Indians have waited long for their time. They are sneered at as setting up fabulous claims, and when they ask \$1.25 cents per acre for a fragment of what was once their country, the demand is regarded as extravagant and unjust in the face of the fact that price is being paid per acre to other Indians for mere equities.

(*Ib.*, p. 259.) "The Wichita and affiliated tribes, numbering not far from two thousand eight hundred or three thousand, have no place they can claim as their rightful home. They have been living upon what is known as the reservation or leased lands in the Indian Territory situate between the ninety-eighth and one hundredth degree of west longitude and between the Canadian River and the northern line of Texas, *by sufferance of the United States.*"

By sufferance of the United States! Heavenly Father, defend us.

Here we see the beginning of the erroneous assertion that has grown into a falsehood by being persisted in, that the Wichita and affiliated tribes have not a perfect title to a rightful home in the country that was the subject of the lease mentioned under and by virtue of the treaty of May 19, 1836, and the lease mentioned and the assurances given them at the Fort Arbuckle council of July 2, 1859, already herein discussed.

(*Ib.*, p. 288.) "The Wichitas and several others of the affiliated tribes are located near the mouth of the Little Arkansas River. They, too, are refugees, not properly from their homes, for they had none, but were, previous to the war, living on lands leased for their use from the Choctaws, in the vicinity of Fort Cobb, in the Indian Territory. They very sensibly feel their dependent condition, and are very anxious to be located at some point which they can claim and hold as their own. * * * In April last, by going myself into the market, a small supply of farming implements and a full supply of seed were procured and distributed to the Indians, and they went to work earnestly, fencing and preparing their grounds and planting their fields and patches, and the prospect of an abundant yield was good until the high waters in July ruined a large portion of their crops, they being nearly all on the 'bottoms,' but not subject to overflow except in extreme high floods."

A. D. 1866 (p. 322).—"Upon assuming the duties of my office I found the Indians attached to this agency in a deplorable condition, poorly fed, naked, sick, and in utter despondency as to their future prospects. * * * Their extreme destitution of proper clothing will certainly cause great debility among them the coming fall and winter, and unless properly provided for it will be heartrending to witness the sufferings that will ensue, especially among the women, children, and the aged.

"These Indians had made praiseworthy efforts in the spring to provide in part for themselves. A large amount of corn and vegetables had been planted, but the heavy rains in June caused the banks of the Little Arkansas and White Water to overflow and utterly destroy nearly the whole of the crop planted. I think if the Government would provide them with suitable agricultural implements they would in a great measure be able to provide food for themselves; at least I should use efforts to induce them to do so, and am satisfied the result would be beneficial. Heretofore they have been able to assist in providing themselves with meat by industry on the hunting grounds, but this season have been driven off by hostile bands.

"They have expressed a strong desire to be removed to their former home, south of the Canadian River, and when informed that the Government had made arrangements for their removal this fall a general feeling of joy was apparent. It is to be hoped that the future will be brighter than the past for these poor homeless wanderers."

A. D. 1866 (April 28).—On this day the United States entered into a treaty with the Choctaws, etc., whose third article reads:

"The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the ninety-eighth degree of west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States at an interest not less than five per cent, in trust for the said nations, until the legislature of the Choctaw and Chickasaw Nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent resident in the said nations at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations, respectively; and also to give to such persons who were residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately

on the enactment of such laws, rules, and regulations, the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw Nations in proportion of three-fourths to the former and one-fourth to the latter, less such sum, at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent before referred to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations, respectively; and should the said laws, rules, and regulations not be made by the legislatures of the said nations, respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw Nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said Territory, in such manner as the United States shall deem proper, the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove, those remaining or returning after having been removed from said nations to have no benefit of said sum of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations." (14 Stat., p. 769; see further, Art. 46.)

Of the cession embodied or expressed in the foregoing article it is to be remarked that as regarded the Wichitas its only legal effect was to remove the cloud upon their title by occupancy that had been cast upon it by the cession made by the United States to the Choctaws in 18—.

It gave to the United States no new or enlarged right as against the Wichitas or their affiliated tribes.

There is no principle of law, equity, or morality that permitted it to give a right to the United States to set aside or ignore what they had done for and with the Wichitas and their affiliated bands in the year 1859.

The assurances given to the Wichitas and their affiliated tribes at the Fort Arbuckle council of 1859 remained as binding upon the United States with it as they had been without it.

A. D. 1867.—Late this year the Wichitas and their affiliated tribes were removed from Kansas back to the country south of the Canadian River, where they had formerly lived.

From report of the Commissioner of Indian Affairs for this year (p. 22):

"Wichitas, Caddoes, Wacoos, Keechies, Tawacapoos, Delawares. Most of these tribes were formally residents of Texas, and all before the late war were living on the leased land west of the Choctaw country. During the war they were compelled to go into Kansas, where they received assistance from the Government. Measures were taken during this year to have them removed back to the leased district. Unfortunately, serious obstacles interposed and delayed the movement until lately; the season was too far advanced for planting; streams were very high, and then appeared the cholera among several of the bands, causing a panic; besides, those who had lost friends wished to remain for awhile to mourn over the graves of the dead. On the 31st of August several of the bands not thus afflicted left for that country, but the disease broke out among them also and many died. To this cause is attributable the large decrease in the population of these bands or tribes as reported by Agent Shanklin. I recommend that liberal provision be made to establish these Indians upon a suitable reserve in the district named, and to provide them with agricultural implements, cows, cattle, and the means of educating their people. With such assistance and the assurance that the place is to be their permanent home there is no question but that they will rapidly improve."

(*Ib.*, p. 323.) "Some of them have become despondent and careless, owing to their unsettled condition for the past few years, and can see no bright future for themselves or children. Formerly the owners of vast tracts of lands, they are now the helpless wards of the Government, which recognizes no rights to the lands they formerly possessed. This dependency they feel keenly. The reason of discouragement is the fear of Government again removing them at some distant day, after they have been to the trouble of building homes and opening up their fields."

They had good cause for despondency, and their fear was well grounded, for—

A. D. 1867 (Oct. 21).—The United States made a treaty with the Kiowas and Comanches that was proclaimed August 25, 1868 (15 Stat., p. 582), by the second article of which 3,549,440 acres of the former so-called leased district—the country of the Wichitas—were given to 5,372 Kiowas, Comanches. (Report of Commissioner, *A. D.* 1871, p. 684.)

It is to be remarked of this cession and treaty that the Wichitas and their affiliated tribes were not parties to it, nor was their consent to it solicited or obtained. As to making them any compensation for this appropriation of their country, it was simply not thought of.

Only a portion of the Comanches were contemplated being located there by the lease of 1855—the Kiowas and Apaches not at all.

A. D. 1868.—Commissioner's report (p. 287): "Since my last annual report the Indians attached to this agency have all removed from their temporary home on the Arkansas River to their old home on the Washita, in the vicinity of Old Fort Cobb, where it was confidently expected they would be permitted to settle by themselves, open up their fields, build their villages, and live in peace the remainder of their days. * * * The work of building fences and putting in crops commenced with commendable energy and zeal. * * * It was very unfortunate for these people that the former agent of the Kiowas and Comanches located in the immediate vicinity of their village, bringing into their midst between 4,000 and 5,000 of the very worst of the plains Indians, some having never before seen an agency. Their conduct was insolent and humiliating to the last degree, helping themselves to everything that pleased their fancy without paying the least attention to protests against it. * * * They remained long enough to almost ruin the entire crop of corn and beans planted by the Wichitas. Complaints were made daily that the fences were broken down and herds of ponies turned into their fields. To these people this loss is almost irreparable, and for them to witness acts of lawlessness like these go unpunished caused indifference and a degree of recklessness on their part that was plainly visible. * * * The neglect of the Government to make a treaty with them or to indicate what will be done with them in the future has a bad influence, preventing them from making exertions to help themselves.

"Having been in the Indian Territory for nearly three months to the date of my orders, and over three months subsequently among the Wichitas, Shawnees, Caddoes, Comanches, and others known as the 'reserve Indians,' now living on the 'leased district,' so called, of the Indian Territory south of Kansas and west of Arkansas, my means of acquiring correct information in connection with the history, present conditions, and wants of those fragmentary bands have been ample.

"The Wichitas were once a very numerous and warlike people, inhabiting the Wichita Mountains from time immemorial, where remains of their ancient villages and fortifications are yet plainly to be traced. They claim to have held dominion over a very large extent of territory, from the junction of the Wichita (now called Washita) with Red River, and extending westward to a line running due south from the headwaters of the Canadian to Red River; said line, according to the best geographical authority, Melish's map, attached to and made part of the treaty of 1819 between Spain and the United States, corresponds very nearly with the one hundred and third degree of west longitude, the present eastern line of New Mexico.

"It will be then seen that the country claimed by this tribe of Indians by original and continued occupancy under the Spanish, Mexican, and United States Governments, embraces a large portion of the country ceded by the United States to the Choctaws. Under the compromise with Texas, a part now known as the 'Pan Handle of Texas' was transferred to that State, and under the treaty of 1855, between the United States and the Choctaws and Chickasaws, a part was ceded to the Chickasaws, the remainder, covering the leased district between 98° and 100° west longitude, by that treaty was reserved to the United States for the settlement of the Wichitas and other bands of Indians. The Wichitas were found in 1834 occupying their village on Cache Creek in the Wichita Mountains by Col. Dodge, 'the first officer of the United States known to have visited them.' Subsequently to that time they removed and built a village near the head of Rush Creek, a tributary of the Wichita or Washita, where they lived for many years in peace and comparative comfort, raising abundant corn and vegetables, plentifully supplied with buffalo meat, and deriving a profitable trade by the exchange of bows and arrows (manufactured from Bois de Arc) with the Comanches for mules, horses, and buffalo robes.

"In the year 1858 the United States sent out a party to survey and mark the ninety-eighth meridian of west longitude which is now the western limit of the Chickasaw Nation, greatly to the surprise of the Wichitas, who assembled and demanded of the Indian agent, who accompanied the surveying party, an explanation; claiming that their country extended eastward to the Wichita and southward to the junction of that river with Red river, and westward to New Mexico. Upon explanation that their Great Father, the President of the United States, intended to provide for and subsist them, and secure them a permanent home, with reasonable indemnity for such portion of their country as he needed, they cheerfully acquiesced in the proposed survey, and sent their young men as guides, scouts, and guards for the party.

"The survey of the ninety-eighth meridian disclosed the fact that the Wichita village of Rush Creek was about 6 miles east of that line, being within the jurisdiction of the Chickasaws.

"Some weeks afterwards a party of Comanches made a descent upon the Chickasaw settlement near Fort Arbuckle and carried off many horses. The Chickasaws, headed by their agent, pursued but failed to overtake the party. The United States officer at Fort Arbuckle soon afterwards prevailed on the Wichitas to go out beyond the Antelope hills, to the range of the Comanches, and endeavor to bring in the lost property and arrange for a peaceful council at the Wichita village, about 60 miles

west of Arbuckle. They went out and succeeded in persuading Buffalo Hump, a noted Comanche chief, and his band, about 600, to come in, with the promise on his part to return the lost property to the council. Unfortunately Major Earl Van Dorn, then in command of six companies of United States cavalry at Camp Radyminke on Otter Creek, west of the Wichita Mountains, was not advised of the proposed friendly meeting. His scouts discovered the Comanche trail, Maj. Van Dorn followed, and by a forced march of a day and night came unexpectedly upon the Comanche camp near the Wichita village, charged upon it just at daybreak and killed a large number and dispersed the remainder, capturing their horses, camp equipage, and all their worldly goods, consisting of buffalo robes, meat, cooking utensils, etc. The Comanches naturally believed that they had been entrapped and swore vengeance on the Wichitas, who, in consequence, abandoned their village never to return, and sought refuge and protection near Fort Arbuckle. Since that time they have been wanderers, except for a few years previous to the late rebellion, while located near Fort Cobb.

"At the breaking out of the rebellion they were again compelled to abandon their homes, and, true to the United States Government, followed the troops under Maj. (now General) Emory to Kansas. Decimated by disease and hardship, they have been recently returned to their location near Fort Cobb, wholly destitute of everything except the scant supplies furnished by the United States. Dispirited and despairing of ever regaining their beautiful homes in the Wichita Mountains, where the bones of their ancestry have reposed for ages, and obtaining compensation for their losses or reward for their loyalty, they appear unwilling to improve their homes unless first assured to them under solemn treaty stipulations, accompanied by a reasonable indemnity for the magnificent domain of which they have been dispossessed, and which, without consultation with them, and without regard to their prior territorial rights, has been again and again ceded by the United States to other parties.

"Justice should be done to these people who have proved in bygone years their industry, thrift, and devotion to the United States."

A. D. 1869, Report of (p. 63): "To the Wichitas the promise of aid in the direction of civilization is an old story, and their past history is one which might well paralyze hope in stronger minds than theirs. They are not named in the Medicine Lodge Creek treaty, and, in consequence of the omission, are here, as they seem to think, on sufferance. Their ancestors inhabited the Wichita Mountains, where from time immemorial they were tillers of the soil as well as hunters and warriors, and around which they claimed dominion over a large district of country. When visited by an officer of the United States in 1834 they were living in thatched huts, cultivating corn, beans, melons, pumpkins, etc., and exchanging the products of their prolific land, and bows and arrows which they manufactured, with the Indians of the plains, for mules, horses, and buffalo robes. * * * In 1854 Gen. (then Capt.) R. B. Marey, with Major Neighbors, a special agent of the Government, was sent to the Wichitas with the promise of a permanent home. * * * True to the United States they once more abandoned their homes, following the troops north into Kansas. After the war was ended, greatly reduced in numbers by starvation and disease, they returned to the vicinity of their old home, Rush Creek. The treaty of Medicine Lodge Creek has given that home and the surrounding country, the bones of their fathers and the bread of their children, to others. With such experiences in the past, the Wichitas and affiliated bands are greatly disheartened and naturally incredulous as to the good intentions of the Government towards them. They are nevertheless submissive and patient. They wish only to live in peace, and be permitted to own the ground they cultivate and occupy. * * * The present relative position of the Wichitas and the Kiowas and Comanches suggests an evil demoralizing to both which should at once be corrected. The former, being patient and obedient, are neglected and poor and their lands are taken from them; the latter, being wild and troublesome, are made the recipients of the lands. It is rewarding evil and punishing good. The one lives under a sense of injustice; the other is thought to think war profitable. In dealing both with the tribes and with individuals special pains should be taken to reverse this treatment."

(Ib., p. 84-86.)—Here is given the report of a council held with the Indians, at which the Waco chief told the commissioners that the Indians had tried to go the white man's road and found themselves worse off than when they began.

(P. 85.)—"About 3 o'clock we left the agency grounds and rode over to the Wichita village, about 3 miles northeast up the Eureka Valley. What a strange spectacle met the eye—'A level plain, dotted with huge haystacks,' exclaimed friend R—. But how symmetrical and beautiful—30 to 40 feet high, and as regularly built as though they were laid out by rules of geometry.

"As we neared them we soon discovered that our haystacks were the houses of the Wichitas, built of straw, thatched, layer upon layer, with stout bindings of willow saplings, tied together with buffalo hides or stripped hickory. Out of the

top the smoke issued, and around an oval opening, or door, at the side a crowd of naked men and women hovered in questioning solicitude at our coming.

"On one side of the door a porch is erected, running along some 20 feet or more, with coverings of small branches for shade, and a raised floor of hickory poles, 2 feet from the ground, for a summer afternoon's siesta.

"The men are good natured and the women cheerful, though more naked than any we had seen. Their dwellings are commodious, clean, and comfortable. In the center is the fire, small and economical, as the Indian always makes it. Around the sides the beds are fitted up on bunks raised three feet from the floor, built of split boards tied together with cords made from buffalo hide. The floor is hard packed earth, clean as it well can be. The builders have wisely and unconsciously made the best of their circumstances. The grass, willow saplings, buffalo hides, etc., are all found close at hand; and out of these, which would have been to us impracticable materials for house-building, the Wichitas have constructed most convenient habitations.

"Watermelon patches, with neat fences, are near at hand. The fields show marks of earnest cultivation, and the people, though evidently very, very poor, are yet glad hearted and hopeful."

The earnest reader will not fail to compare this 1869 description of the Wichitas houses with that of Catlin's in 1834 and that of the Spaniard Jaramillo's in 1541.

(Ib., p. 383.) "These Indians have, from time immemorial, been accustomed to raising small lots of corn. They still continue it, and this year have many of them on the banks of the Wichita River, which they have planted and cultivated without any assistance from the whites. * * * The Wichitas, Caddoes, and affiliated bands claim to be the prior occupants of this district of country, and that they have never ceded it to the United States or received any compensation therefor; and there is nothing in this office to show that there has been any part of the country reserved to them. They are, however, occupying both sides of the Wichita (or Washita) River. I would urge the attention of Congress to the claim of the Wichita Indians."

But A. D. 1869 (August 10), the President made an Executive order giving to Cheyenne and Arapahoe Indians *all of the country of the Wichitas and affiliated tribes*, in the so-called leased district, that was not given in 1867 to Kiowas, Comanches, and Apaches, under the Medicine Lodge Creek treaty of that year.

Of this order it is to be remarked that it was not in the nature and had not the legal force and effect of a formal, solemn treaty, inasmuch as circumstances could and might demand a revocation of it wholly or in part. And it is claimed and submitted on behalf of the Wichitas and affiliated tribes, that in consequence of Executive action and Congressional appropriations, beginning as early as 1872 and continuing to the present time, a substantial revocation of the order has been wrought, and has been and is tacitly acquiesced in by the Cheyennes and Arapahoes, in respect to the 743,610 acres that is the subject-matter of the agreement between the Wichitas and affiliated bands and the Cherokee Commission in favor of the Wichitas and their affiliates.

Under this view of the case it is necessary to notice only in the briefest manner that the Wichitas and their affiliates were not consulted about the making of this order, nor consented to it, nor have ever been compensated for the country covered by it, and that the Cheyennes and Arapahoes were not of the Indians whom the lease of 1855 contemplated being located in that country.

With that Executive order staring them in the face, who can wonder or complain at the Wichita chief, Buffalo Good, soon afterwards saying these things at Boston, in the State of Massachusetts:

A. D. 1871, Report of (p. 36).—"The bones of my fathers lie in every hill and valley of my country, and I don't want to be turned out from that country, for I love it very much. Nearly thirty years ago Washington gave me and my people a good chief, who tried to put us on the white man's road. We think he meant all that he said. We wanted to go on the white man's road very much. I and my brother represent five different tribes who have always been friendly and who wanted to be friendly to the whites. But because we do not fight, Washington takes away our lands and gives them to the tribes that are fighting them all the time. My people are grieved at this, and when I left home they told me to preach hard and get some satisfaction in regard to our country; but when I return it will be with my hand before my eyes, and my head cast down, for I can tell them nothing new. They knew it all before I left. * * * Some of the tribes are living well. They ought to, for the white men have stolen our lands (we who never hunted the whites), and had given them to them, and they are learning them to grow up like white people. If they would give us our lands we would learn to do the same thing. When I got to Washington they said they knew all about my people. If they did know it, why didn't they help us, and fix it?"

(Ib., p. 502.) "I have to record that, without any provocation whatever from offi-

cers, soldiers, or citizens, of this or other points, the Indians of this agency (Kiowa and Comanche) have been, since last report, carrying on a continuous war in Indian style in Texas, with very short intervals. * * * But while the Quahada band (Comanches) remains on the Staked Plains and forms a nucleus to which disaffected Indians of other bands resort and assist in organizing raiding parties, there will be continued trouble in Texas and elsewhere."

(Ib., p. 463.) "The affiliated bands (Wichitas and others) under the care of Agent Richards, have long suffered many privations and inconveniences, some of which we hope soon to remove. * * * They are peaceably inclined, industrious, and anxious for assistance in their efforts to attain a higher civilization, and will exert a salutary influence over their uncivilized neighbors."

(Ib., p. 478.) "I would again respectfully call attention of the superintendent and the Department to the subject of setting apart a reservation for the Wichitas and other affiliated bands, with defined boundaries. The matter was referred to in my last annual report, and in adverting again to the subject I would call the attention of the Department to the necessity of prompt action in urging upon Congress the importance of extending to these deserving Indians every facility practicable for their advancement and enlightenment, of which I think this is one of much importance. In presenting this subject I would refer to the fact that in a treaty held with the Wichitas and other affiliated bands at or near Port Arbuckle and Brazos Agency, in or about 1858-59, the title of the Wichitas was recognized to the land on which they now reside, and extending from the Red River to the Canadian. The country since granted to the Kiowas and Comanche Indians embraces that of the Wichitas, the boundaries being the Red River on the south and the Washita on the north. For these lands no compensation has been awarded the Wichitas. I would suggest that these are subjects of special moment to the Indians interested, and I would recommend the necessity of appointing a commission to take the whole matter under care for examination and final adjustment, and that the action of Congress should be solicited to that end.

"These Indians, more especially the Caddoes, are exerting their influence with the Kiowas and other Indians of the plains, endeavoring to dissuade them from their raiding propensities and wild manner of living, and in encouraging them to settle down on their reservations. * * * It is my conviction that if the affiliated bands of this agency are properly encouraged and assisted they will not only make rapid improvement themselves, but their influence and example will have a salutary effect upon the wild Indians of the plains who have been giving so much trouble."

A. D. 1872, *Report of* (pp. 7, 8).—At this time the larger portion of the Kiowas and some Comanches—the Quahada band and others—were "out" upon the Staked Plains engaged in making raids into Texas.

The Washington City officials desired to stop this peacefully, if possible. They thought they could accomplish this by bringing well constituted delegations of those Indians thither and that the wealth and power of the Government and its people being seen would prove a more efficient peacemaker than many soldiers.

Two commissioners were sent from Washington to the Indian Territory to secure, if possible, and bring on such delegations. Their first step was, of course, to secure friendly communication with those "out" Indian raiders. To accomplish this they invoked the good offices of the Wichitas and their affiliated tribes. These responded favorably, and so efficiently that one of the commissioners—the other was sick and soon died—was able to meet in council, on the 6th and 7th of September, representative men of the Apaches, Arapahoes, Caddoes, Comanches, Delawares, Keechies, Tawacoroos, Wacos, and Wichitas. Only a few Kiowas were present, and they, although head men, not true representatives of the tribe. This was a great disappointment, as but a few days before the Kiowas had visited Fort Sill and the Wichita Agency and had been told of the object, time, and place of the proposed council, and their principal chiefs had faithfully promised to attend.

(P. 128). "Depending upon this, the main attention had been given to securing the attention of the representative men of the most unruly bands of the Comanches, and this was most successful."

To the representatives assembled the commissioner explained the Government's method of controlling all its citizens and punishing offenders, and gave assurance of the determination of the authorities to hold the Indians to a similar accountability for their conduct.

"Reviewing the history of the tribes present for the past four years, their attention was called to the former connection of the speaker with them and the truth of his predictions as to the result of their actions as a reason for their now listening to his words and believing what was told them. The Indians were then plainly assured of the intentions of the Government to effectually stop the raiding into Texas, and all marauding, both within and beyond their reservations, and they were duly warned of the folly of continual disregard of, or resistance to, these orders, and

the certainty of punishment should the scenes of the past year be repeated. * * * And now the Arapahoes, Caddoes, Wichitas, and Delawares repeated their advice very effectively, while the quiet and friendly portions of the Comanches (if any can be justly so called) added their voices of entreaty and warning." (P. 129.)

"Tribe and band followed one another in expressions of friendship to the Government and desire for peace, but none guaranteed any cessation of the disturbance caused by the roving parties. The commissioner then told them that these professions were useless given here; that they were always presented at the asking, but forgotten and violated by many before even reaching Washington, and that the only course safe to pursue was for each tribe and band to send suitable delegations with the commissioner to Washington to discuss fully various unsettled matters, make their own excuses for deeds done, and present their pledges of future good behavior.

"The evening of September 6 was passed in meetings of their own, and comparisons of views between different parties, and the Arapahoes and Caddoes present deserve special commendation for their efficient, friendly labors this night.

"The Indians were the next day called for any speeches they might have to make and a statement of their conclusions on the propositions made. * * * The Arapahoes, Apaches, Delawares, Caddoes, Wichitas, Wacoos, Keechies, and Towocarcos claimed to have followed, with no deviation, 'the white man's road;' that they proposed so continuing, and were ready to send proper representatives to Washington to make any guarantees desired. The Comanches, by bands, coincided in the general movement. The wilder bands did not follow in the same path. * * * Under these circumstances they saw no benefit to be derived from going to Washington, but, upon being urged, finally consented to send a fair representation of each band. * * *

The council dissolved on the evening of the 7th and the commissioner left for the Upper Arkansas Agency; but on the 19th he met on the Washita a party of Kiowas, over fifty in number. * * * A long conversation took place, the Kiowas evincing no desire to visit Washington, while they had many grievances to present and requests to make. The appointment of Washington delegates was strongly urged and the importance of effecting this led your commissioner finally to promise them that their absent prisoner chiefs, Satanta and Big Tree, should meet them on the journey, provided they sent satisfactory representatives. Upon this the Apaches, Comanches and others brought their influence to bear upon the Kiowas, and the latter at last agreed to make up a good delegation headed by Lone Wolf. This settled, the next morning, Friday, September 20, was fixed as the time for the delegates to meet near the Wichita agency, and start for Washington."

(P. 131). "The night before starting, however, a rumor reached the Indian camps, near the place of meeting, of the movement of a large body of troops near the southwestern portion of the reservation, threatening the camps of the 'out' Comanches and the Kiowas near them, which caused a great disturbance among the delegates, and the disappearance that night of a number who had promised to go. * * * Fearing a general stampede, which was barely averted, the commissioner put the remaining delegates in motion as soon as possible" on September 20, the day appointed.

(Ib.) "The Caddoes, Wichitas, and affiliated bands being located in camps easily within reach, the preparation of the delegates from this agency was left entirely to Agent Richards. The commissioner regrets to report that the matter received no attention whatever at the hands of the agent, and the representatives of those tribes accompanying the party were very hastily gathered up at the last moment, when too late to make any changes or preparations for the journey. The interests of these people and of the Government will be likely to suffer more or less as a result."

The foregoing copious extracts from the commissioner's report are presented because the Wichitas and affiliated tribes have ever since claimed that those of their tribe who were thus carried to Washington were their representatives only in being members of the tribes; that they were not delegates of theirs and had no authority to represent them in any matter of business whatever, especially so important a matter to them as their right to a home in their own country and a relinquishment of their claims against the United States for compensation for their country taken from them and other losses suffered which had not been the subject of any talk between them and the commissioner; that no council was held by them in regard to sending their members who were so gathered up as their delegates to Washington City; that these members were so gathered up only as one of the means resorted to by the commissioner to avert the general stampede that was imminent and that he feared; and finally, that it was the company of these members of the friendly Wichitas and affiliated bands that encouraged the delegates of the Kiowas and others to go forward.

They are so presented because they refute, so far as the Wichitas and their affiliated bands were concerned, the statement of the commissioner (p. 140) that "every tribe and band of them are represented by chiefs or headmen in the delegation, prepared to discuss and settle their reservation question at the present visit."

The Indians reached Washington and were reported to the Department on the 2d of October. After being there some days the Commissioner of Indian Affairs admitted to an audience, and then and there told them he had sent for them to tell them about the boundaries of their country, and that their east line was the ninety-eighth degree west longitude, the Canadian River their north line, the Washita River their south line, and that their west line was a short distance west of Fort Cobb, and then called upon them to sign an agreement to accept the tract of country within the limits for a reservation and relinquish all their claims on account of lands formerly held by them, and of which they were dispossessed without their consent.

The Indians refused to sign the agreement and made protest, but the Commissioner would not listen to it, saying that the limits had been settled, and no discussion of the matter was ever permitted.

But subsequently the Indians, in view of their utterly dependent situation in Washington, and worn out and eager to get away and back to their country, from which they had been gathered up so summarily and without the least preparation for remaining away, did attach their signatures to the paper, but under protest, distinctly informing the Commissioner that previous to their being brought to Washington there had been nothing said to them about ceding any lands or relinquishing any rights or claims; that they had not been delegated by their people to represent them or make any agreement, and that their people would not recognize any such agreement.

It is to be remarked of the so-called agreement represented by the paper so signed that the Indians who signed it were not delegates, as most conclusively shown by the official statements of the commissioner who gathered them up and carried them to Washington, and for this reason alone it was a nude pact.

It was of no validity because not made upon any consideration passing from the United States to the Indians.

It was not even the free, voluntary act of the individuals who signed it.

The Cheyennes and Arapahoes were not consulted about it, and have expressed no consent to it, and, finally, the Wichitas and affiliated tribes have been steadily repudiated, and the Congress of the United States have never deemed it worthy of ratification.

A. D. 1872, Report of Commissioner of Indian Affairs (p. 43), it is said: "These Indians, fragments of once important tribes originally belonging in Louisiana, Texas, Kansas, and the Indian Territory, were all, excepting the Wichitas and Delawares, removed by the Government from Texas, in 1859, to the 'leased district' where they have since resided, at a point on the Washita River near old Fort Cobb. They have no treaty relations with the Government, nor have they any defined reservations. They have always, or, at least for many years, been friendly to the whites, although in close and constant contact with the Kiowas and Comanches. A few of them, chiefly Caddoes and Delawares, are engaged in agriculture, and are disposed to be industrious. * * * *The Caddoes rank among the best Indians on the continent*, and set an example to the other bands affiliated with them worthy of being more generally followed than it is. In physique, and in the virtues of chastity, temperance, and industry, they are the equals of many white communities.

"A permanent reservation should be set aside for the Indians of this agency, and, with proper assistance, they would doubtless in a few years become entirely self-sustaining. In the chapter of this report containing specific recommendations for legislation to be had by Congress at its approaching session will be found the text of an agreement between these bands and the Commissioner of Indian Affairs, by which the Indians relinquish all their claims on account of lands formerly held by them, and of which they were dispossessed without their consent, and the Government on its part confirms to them the tract now in fact occupied by them. Effect should be given to this agreement by Congress at as early day as practicable. The claims relinquished have been long before Congress, and *may or may not have merit*, a question not here considered; but it is equally for the interest of the Government and of the Indians that these bands should be put as early as practicable in the way of self-support, a result which will be greatly forwarded by confirming to them a permanent home."

It is easy to see from the history of the Indians given that the Commissioner was incorrect in some of his assertions.

A. D. 1882, Report of (p. 64).—"The affiliated bands, or the six small tribes that originally formed the Wichita Agency, have advanced further than the Kiowas, Comanches, and Apaches. They have always been friendly to the whites, and for some years before they were brought on to their reservation many of them had been living in houses and cultivating the soil. All of them now live in houses, dress in citizen's dress, and all are engaged in cultivating the soil, or employed at some kind of labor. They are quiet and peaceable, and I believe thoroughly contented, except that some of them complain that they do not hold the lands they occupy by any treaty

with the Government. From some cause the treaty was never ratified, and it was to obtain a grant of their lands that a delegation visited Washington last spring."

That delegation came to Washington to try and have their title to country definitely settled, to prevent the threatened leasing of their country to white men for grazing purposes by the Cheyennes and Arapahoes, and to secure compensation for their country taken from them by the United States without their consent and given to other Indians.

They presented petition and protest and a bill was introduced in Congress for their relief, but nothing substantial came of it all.

A. D. 1883.—In the spring of this year a brief was presented to the Indian Bureau on behalf of the Wichitas and their affiliated tribes, and this led to the sending of one Eddy B. Townsend as special agent to investigate, and he made a report unfavorable to the Indians. That report, read with this history of the Indians, will be seen to be a ridiculous and utterly worthless document.

A. D. 1891.—Congress, by act approved March 2, 1889, created the "Cherokee Commission," and that commission visited the Wichitas and affiliated bands in the spring of this year, 1891.

These Indians being called into council, the commission submitted to them for their consideration a paper in words and figures following:

"The undersigned commissioners on the part of the United States, appointed for the purpose, now make the following offer to the Wichitas and affiliated bands of Indians in the Indian Territory:

"The Indians shall cede and convey and forever relinquish to the United States all their right, title, claim, and interest in and to the following described tract of country, to wit: Commencing at a point in the middle of the main channel of the Washita River where the ninety-eighth meridian of west longitude crosses the same; thence up the middle of the main channel of said river to the line of ninety-eight degrees forty minutes west longitude; thence on said line of ninety-eight degrees and forty minutes due north to the middle of the main channel of the main Canadian; thence down the middle of the said main Canadian River to where it crosses the ninety-eighth meridian; thence due south to the place of beginning.

"The United States shall classify said country into grazing and grain growing land, and shall allot to each Indian on said reservation one hundred and sixty acres of land, at least one half of it grazing land, the title to which the United States will hold in trust for the period of twenty-five years, during which time it shall not be sold or encumbered, nor subject to taxes, nor execution for debt, and shall never be subject to execution for debt contracted or obligation arising during said period of 25 years.

"Should any Indian die during said period of twenty-five years, then his or her land shall descend to his or her heirs according to the law of the State or Territory in which said land shall be situated.

"In addition to said allotments of land which may be taken anywhere in said reservation except on land set apart, used, or occupied for agency, school, military, or other Government purposes, and except sections sixteen and thirty-six, in each Congressional township, which shall be kept and finally sold for common school purposes.

"The United States will pay said Wichita and affiliated bands of Indians the sum of two hundred and eighty-six thousand (\$286,000) dollars, fifty-three thousand (\$53,000) dollars of which shall be distributed among said Indians per capita, within one hundred days after Congress shall ratify the agreement.

"Another fifty-three thousand (\$53,000) dollars shall, within one year after the contract shall have been ratified by Congress, be paid out to or for said Indians per capita, under the direction of the Secretary of the Interior, for the purpose of improving the allotments of said Indians, and otherwise bettering their condition; the remaining one hundred and eighty thousand (\$180,000) dollars shall be placed in the Treasury of the United States to the credit of said Indians, and shall bear interest at the rate of four per cent per annum, which interest shall be paid out annually by the Secretary of the Interior to or for said Indians, and for such purposes as to him seems best, reference being had to the comfort and advancement of said Indians in the ways of civilized life. Provided, the number of allotments shall not exceed one thousand and sixty, but if the allotments shall exceed that number then there shall be deducted from said one hundred and eighty thousand dollars the sum of eighty dollars for each allotment in excess of said number one thousand and sixty.

"Nothing in the contract shall in any manner or to any extent whatever affect any claim said Indians, or any of them, have against the United States, either for money or lands outside of the Indian Territory.

"Done at Anadarko, I. T., this 13th day of May, 1891.

"DAVID H. JEROME,
"ALFRED M. WILSON,
"WARREN G. SAYRE,

"Commissioners on the part of the United States."

The Indians submitted a counter proposition, as follows:—

“To the honorable the Commissioners of the United States:

“The proposition submitted by you on the 13th instant have received our most earnest consideration. Impressed as we are with the gravity of the situation in which we find ourselves and upon such consideration we are unable to agree to all said propositions.

“In reply we submit as follows:

“The proposal agreement shall be upon the terms following, to wit:

“The Indians to cede and convey and forever relinquish all their right, title, and interest in and to the tract of land described in the honorable Commissioner's first proposition for and in consideration of seven hundred and fifteen thousand (\$715,000) dollars.

“The said tract of land to be divided by a north and south line, so that on the east side thereof there shall be the quantity requisite for the apportionment to individuals contemplated—this land to be held by the Indians in common—the tract on the west side of said line to be opened to settlement by citizens of the United States.

“The payments of the money, the price of the land proposed to be ceded and relinquished, to be as follows:

“Two hundred and seventeen thousand (\$217,000) dollars to be paid to the Indians within one hundred days after the ratification of the proposed agreement by the Congress of the United States.

“Two hundred and seventeen thousand (\$217,000) dollars to be paid to the Indians within one year after such ratification.

“The remaining two hundred and eighty-one thousand (\$281,000) to be deposited in the Treasury of the United States to the credit of the Indians for the period of twenty-five years and bear interest at the rate of four per centum, the interest to be paid annually to the Indians, and the principal to them at the expiration of twenty-five years.

“Each and every of said payments to be made directly to the Indians; each when received by them to be by them distributed among individuals per capita.

“The proposed agreement to recite that the right is reserved to the Indians to prosecute against the United States any and every claim they may believe they have the right to prefer and prosecute save and except any as to the tract of land mentioned in the honorable Commissioners' first proposition.

“The proposed agreement to recite that is made and entered into as well for the benefit of those who (citizens of the United States) are now the adopted citizens of said Indians as for the benefit of the Indians themselves.

“The proposed agreement to recite that when there is a fractional part of a section, caused by the meandering of either the Canadian River or of the Washita River, the individual whose selection shall adjoin such fractional part of a section or sections shall have the preferred right to purchase the same at the price of one dollar and a quarter per acre.”

Afterwards the Indians submitted for the consideration of the Commissioners a paper in words and figures following:

“To the honorable the Commissioners of the United States:

“The Indians submit respectfully as follows:

“On yesterday they listened attentively to the arguments advanced by the honorable Commissioners, respectively, in support of their proposition that the Indians accept fifty (50) cents per acre as the price of their surplus lands. They have given the arguments their most careful consideration, and have to advise the honorable Commissioners that they do not convince them that their price (one dollar and a quarter (\$1.25) per acre) is not a just and fair one.

“They say, most respectfully, that the honorable Commissioners have not viewed the entire country, and that consequently they must proceed upon hearsay and some misinformation as to the character of the lands proposed to be sold.

“The Indians have lived for years in the country, and are familiar with it. Fitness for farming is not the only test of the value of land. There is such a thing as land having value for grazing purposes, and the Indians insist that the country proposed to be sold is, as a whole, well fitted for grazing purposes, and in the market, if competitive bids were permitted, would bring to them more than the price (\$1.25 per acre) they ask. This independent of the quantity of land really good for farming purposes and the large quantity of valuable timber, walnut, &c., &c., there is upon it.

“The Indians ought not to be in any the least degree held responsible for the policy of the Government of the United States acting in this behalf for the advantage of their citizens, and they do not see any soundness in the logic that proposes to them that if their surplus lands can be sold for grazing purposes at \$1.25 per acre, and possibly a great deal more if competitive bids at a sale, public or private, were permitted—that because the United States desires to dispose of it as farming land

they should sell at fifty cents per acre simply because it is possibly worth only that much for farming purposes—something that is not at all admitted by the Indians.

"The Indians have been most solemnly assured that it was not the intention of the United States in creating the honorable Commission to negotiate with them to make money at their expense. The Indians, nevertheless, respectfully submit that if their surplus lands can be sold for grazing purposes at \$1.25 per acre, then, if not the United States, some whom the United States seek to favor will make money at the expense of the Indians if they be constrained to sell for fifty cents per acre simply because the United States will force a sale of the land ostensibly for farming purposes at which only the United States can purchase.

"Now, in consequence of these facts, namely: That the price of the land is really the only substantial question at issue between the Indians and the honorable Commissioners;

"That it is the Congress of the United States who control the purse of the United States, and can and will say ultimately what price per acre shall be paid for the Indians' surplus lands;

"That Congress has not said that the honorable Commissioners shall not offer and agree to pay to the Indians \$1.25 per acre, if it be just and fair that that price should be paid for the surplus lands;

"The Indians, who seek to be fair and just, do, in order to manifest this, desire that if it be relegated to the Congress of the United States to determine upon consideration of all existing facts and equities what shall be the price to be paid and the amounts of the respective payments,

"The Indians, looking to such a solution of the question at issue, propose respectfully that a paper be made in due form reciting all the propositions that are agreed upon and complete, with the single exception of appropriate blank spaces for the insertion, first, of the amount that the Congress shall determine as the price of the surplus lands, and, second, for the insertion of the amounts of the payments thereof.

"The Indians, taught by experience, know well enough if they make a paper with the honorable Commissioners saying that they are willing to take fifty cents per acre when in their hearts they are not willing to do so, and do it only as a way of ending a prolonged and tiresome discussion, and with a hope that notwithstanding the paper the equities of the case will be considered by Congress, and they be paid more than the paper promises will be paid, that the paper will be held against them and they, to their grievous disappointment, will get no more money than the amount named in it.

"The Indians know full well that they can not, and will not, receive any money until the meeting of Congress in December of the present year, and even not then until there is a contract binding the Indians that is approved by Congress; this whether they do or do not now make with the honorable Commissioners a full and complete paper.

"Such being the fact the Indians further respectfully submit that neither the interest of the United States nor those of the Indians will be in the least prejudiced by the making of such a paper as is hereby just above proposed.

"In Council, June 2, 1891."

On the 4th June, 1891, the agreement that has been already submitted by the President to the Congress was entered into.

Now, in further support of the right of the Wichitas and affiliated tribes to be paid \$1.25 per acre, their price for their lands, the following comparisons are submitted in order to show that if they should be paid only 50 cents per acre, the amount paid to them per capita will be much less than that paid per capita to individuals of other tribes whose claims to the favorable consideration of the United States are not to be compared with that of the Wichitas and affiliated tribes, as shown by the foregoing historical statement compiled from official sources. The figures are taken from the report of the Commissioner of Indian Affairs for 1890.

Territorial division.

Tribe.	Popula- tion.	Acres.	Acres each.
Cheyennes and Arapahoes	2, 372	4, 297, 771	1, 811. 87
Kiowas, Apaches, and Comanches	3, 064	2, 968, 893	968. 96
Wichitas and affiliated tribes	1, 058	743, 610	702. 27

Amount per capita.

Tribe.	Popula- tion.	Price.	Per capita.
Cheyennes and Arapahoes	2, 372	\$1, 500, 000	\$632. 37
Wichitas and affiliated tribes.....	1, 058	286, 000	270. 32

To the Creeks were paid for a mere equitable title to the Oklahoma country \$1.25 per acre, *i. e.*, \$2,280,857.10, by act of March 1, 1889.

For the Choctaws and Chickasaws there have been appropriated for their equitable interest in the lands ceded by the Cheyennes and Arapahoes, at \$1.25 per acre, \$2,991,450, by act of Congress March 3, 1891.

The agreement made with the Cherokees for their interest in the outlet or "strip" country at \$1.40 per acre, \$8,000,000 and more.

It must be manifest that such an inequality of payment per capita, incidental to the unequal and unjust parceling out of the country of the Wichitas and affiliated tribes, would of itself be a great injustice to these.

In connection with it these most important facts must be borne in mind, to wit:

The direct result of the Indians taking allotments in severalty is to bring the individual in competition with the whites in the struggle for existence in the daily affairs of life; and

It will inevitably be attended with expenses more or less heavy to be paid in ready money; for instance, that great item of expense, the construction of fences.

So that the individual Indian with his 160 acres and \$270.32 to meet the expense account that will inevitably attend his starting out upon his new life, may well dread the future and regard the prospect of his succeeding as not encouraging.

A former Commissioner of Indian Affairs thus expressed himself:

"The people of the United States can never without dishonor refuse to respect these two considerations: First. That this continent was originally owned and occupied by the Indians, who have on this account a claim somewhat larger than the privilege of 160 acres of land and 'find himself' in tools and stock, which is granted as a matter of course to any newly arrived foreigner who declares his intention to become a citizen. * * * Second. That inasmuch as the progress of our industrial enterprise has cut these people off from modes of livelihood entirely sufficient for their wants, and for which they were qualified, in a degree which has been the wonder of more civilized races, by inherited aptitudes and by long pursuit, and has left them utterly without resource, they have a claim on this account again to a temporary support and to such assistance as may be necessary to place them in a position to obtain a livelihood by means which shall be compatible with civilization. * * *

"The freedom of expansion which is working these results is of incalculable value. To the Indian it is of incalculable cost. Every year's advance to our frontier takes in a territory as large as some of the kingdoms of Europe. We are richer by hundreds of millions. The Indian is poorer by a large part of the little that he has. This growth is bringing imperial greatness to the nation. To the Indian it brings wretchedness, destitution, beggary. Surely there is obligation found in considerations like these, requiring us in some way, and in the best way, to make good to these original owners of the soil the loss by which we so greatly gain.

Your memorialists, believing that in the foregoing historical statement it is shown most conclusively—

(a) That their ancestors were an industrious, prosperous, and strong people.

(b) That they and their descendants have been continuously the friends of the people of the United States.

(c) That their right to be paid the prices they ask for their lands, the subject-matter of their agreement with the "Cherokee Commission," to wit, \$1.25 per acre, is fully sustained by the facts and by every principle of justice and right.

(d) That they, subjected, without fault of their own, to many reverses, have always manifested a willingness and demonstrated a capacity to provide for themselves and to manage successfully their affairs, individual and collective, when given the opportunity to do so, even under the most untoward circumstances, have now to request and strenuously insist that the bill to be enacted by the Congress in order to carry into effect the agreement with the "Cherokee Commission" shall provide, in addition to giving them the \$1.25 per acre for their lands, that the amount of money the price therefor shall be paid to them direct in either two payments, to be made within one year from the enactment of the bill, or as proposed by them to the honorable the Cherokee Commission, in and by their counter proposition, and finally, that in order to make effective that stipulation in the aforesaid agreement that saves to your memorialists the right to prosecute claims against the United States, it shall confer

upon the Court of Claims of the United States jurisdiction to hear and determine each and every claim they believe they have the right to urge against the United States.

They ask and urgently insist upon the payment of the price of their land being made to them direct as an incident of ownership and because they believe they will be able to use it wisely to their benefit, and that it will be to their great advantage to have it so paid.

And, as in duty bound, your memorialists will ever pray.

SO-DI ARKO (his x mark), *Wichita*.

CADDO JAKE, *Caddo*,

By NAUT CHAG (his x mark).

KE WE SIDEMA (his x mark), *Wichita*.

KADUA UNTIDIES (his x mark), *Keechie*.

TA WAKANEY JIM (his x mark), *Towaconie*.

WHITE BREAD (his x mark), *Caddo*.

KANUSTY (his x mark), *Caddo*.

ENOCH HOAG (his x mark), *Caddo*.

SARGENT TOM (his x mark), *Caddo*.

BASINDA BAR (his x mark), *Caddo*.

KEECHI SAM (his x mark), *Keechie*.

NAS AS TOE (his x mark), *Towaconie*.

CADDO GEORGE (his x mark), *Caddo*.

LAURIE TATUM (his x mark), *Wacoe*.

LITTLE CHIEF (his x mark), *Caddo*.

JIM BOB (his x mark), *Delaware*.

HY H. LITTLE,

H. E. CRAGGS,

Witnesses to signatures of Laurie Tatum, Jim Bob, and Little Chief.

JOHN CRAGGS,

H. E. CRAGGS,

Witnesses to all other signatures hereon.

